

REMARKS

Claims 1-5 stand rejected under 35 U.S.C. 103(a) as unpatentable over CA 2,001,688 in view of U.S. 7,074,392. Applicants traverse the rejection.

The rejection asserts that the subject matter of claims 1-5 is would have been obvious over Orlowski, CA 2,001,688 in combination with US 7,074,392. Applicants respectfully submit that the Orlowski reference is mischaracterized, and does not suggest the claimed invention, either alone or in combination with the '392 patent.

The rejection asserts that CA '688 teaches topical compositions for treating human nails comprising 6.25% gilsonite and mineral oil along with other agents and excipients. However, Orlowski does not teach or suggest a composition comprising "gilsonite oil." Gilsonite suspended in mineral oil is not the same as gilsonite oil.

Gilsonite oil is an extract of gilsonite that may be subsequently fractionated.

Declaration of Gary David Fisher, ¶ 3, submitted herewith (Fisher is an employee of American Gilsonite Company. DPC Products, Inc., the assignee of the instant application, is a wholly owned subsidiary of American Gilsonite Company).

Gilsonite oil is chemically and physically distinct from the combination of gilsonite and mineral oil. For example, gilsonite is a shiny black solid substance similar to the mineral obsidian; gilsonite oil, on the other hand, is a clear to brown liquid having about the same viscosity as water. Fisher Declaration, ¶ 4.

The Fisher Declaration further demonstrates that gilsonite oil was a publicly accessible and commercially available product at least as early as the filing date of this application, i.e., January 2, 2004. As the two compositions are chemically distinct compositions, one of ordinary skill in the art would not have expected that the properties of gilsonite oil would have been the same as those of gilsonite and

mineral oil. As the CA '688 reference does not describe gilsonite oil, and likewise does not suggest its use, the reference fails to teach or suggest the presently claimed compositions.

Similarly, U.S. '392 fails to cure the deficiencies of CA '688. The '392 reference is likewise silent as to the use of gilsonite oil, and so it does not teach or suggest the claimed compositions. Accordingly, reconsideration and withdrawal of the outstanding rejection is respectfully requested.

In view of the foregoing amendments and remarks, applicants respectfully request reconsideration and withdrawal of all outstanding rejections. Applicants submit that the claims are now in condition for allowance, and respectfully request formal notification to that effect. If, however, the Examiner perceives any impediments to such a notice of allowability, whether substantive or formal, the Examiner is encouraged to call Applicants' attorney at the number provided below. Such informal communication will expedite examination and disposition of this case.

Respectfully submitted,

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